Nos. 26, 37, and 38

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 26

UNITED STATES OF AMERICA, AND BORG-WARNER CORPORATION (DETROIT GEAR DIVISION), APPELLANTS

v.

CITY OF DETROIT, A MUNICIPAL CORPORATION

No. 37

UNITED STATES OF AMERICA, APPELLANT

v.

TOWNSHIP OF MUSKEGON, A MUNICIPAL CORPORATION, ET AL.

No. 38

CONTINENTAL MOTORS CORPORATION, ETC., APPELLANT

v.

TOWNSHIP OF MUSKEGON, A MUNICIPAL CORPORATION, ET AL.

ON APPEALS FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

REPLY BRIEF FOR THE UNITED STATES

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In their briefs appellees concentrate on the form of Public Act No. 189 of Michigan, and insist that by

calling itself a tax on the *use* of tax-exempt property the tax involved is therefore not a tax on tax-exempt property. Appellees discount the substance, purpose, and effect of the Michigan statute, and all but ignore Congressional action in the field which reaffirms the immunity from local taxation of the Government's interest in leased property.

I

ACT NO. 189 IS IN VIOLATION OF THE CONSTITUTIONAL IMMUNITY OF UNITED STATES PROPERTY FROM LOCAL TAXATION WHICH EXISTS IN THE ABSENCE OF CONGRESSIONAL LEGISLATION

A. ACT NO. 189 IS INVALID SINCE IN PURPOSE, EFFECT AND SUBSTANCE IT IS A TAX ON GOVERNMENT-OWNED REAL PROPERTY

It is not disputed that the purpose of the tax is to collect revenue based on the assessed value of Government-owned real estate. It is equally undisputed that the effect, if the tax is sustained, is that the United States will pay and the local authorities will receive amounts measured by the local real estate taxes on the Government's tax-exempt real estate. In substance the tax involved is identical to the real estate tax which Michigan and the local taxing authorities concededly could not levy.

In form it is no different except that Michigan does not claim rights which it could not claim. Under Michigan law real estate taxes are assessed to the owner "and also to the occupant" (Gov. Br. No. 26, p. 33, fn. 16); and constitute a lien against the property. By dropping an assessment against the owner and by dropping the lien Michigan does not thereby

make United States property subject to what is in purpose, effect and substance an *ad valorem* real estate tax.

Appellees' argument that they are taxing the private party and not the Government was answered by this Court in *United States* v. *Allegheny County*, 322 U. S. 174, 187:

> * * * the State has made no effort to segregate Mesta's interest and tax it. The full value of the property, including the whole ownership interest, as well as whatever value proper appraisal might attribute to the leasehold, was included in Mesta's assessment.
>
> It is contended the whole value of the property may be reached since the impact of the tax is upon Mesta. * * *
>
> We think, however, that the Government's property interests are not taxable either to it or to its bailee. * * *

In quoting the Court's language in the *Allegheny* opinion to the effect that "beneficial personal use of the property may be taxed" to a contractor (Appellees' Br. Nos. 37 and 38, p. 16), appellees stop short and fail to quote the next sentence:

> But neither he nor the Government can be taxed for the Government's property interest. [322 U. S. at 188]

The Court there made it clear that in taxing the "use of the property" a state could not include, in the measure of the tax, the value of the Government's property interest. The tax here is a tax on the value of the Government's property interest. And, as this

Court stated in *Macallen Co.* v. *Massachusetts*, 279 U. S. 620, 629:

> * * * courts, in scrutinizing taxing acts like that here involved, should be acute to distinguish between an exaction which in substance and reality is what it pretends to be, and a scheme to lay a tax upon a non-taxable subject by a deceptive use of words: * * *

B. ACT NO. 189 IS INVALID SINCE IT IS DISCRIMINATORILY DIRECTED AT TAX-EXEMPT PROPERTY

The statute here involved is not a general one, imposing a broad tax, that happens to impinge upon property that is tax exempt. This tax applies only with respect to tax-exempt property. It is the very fact that property is exempt from tax which causes the tax to be imposed. The statute is a conceded attempt to make up for the fact that Michigan cannot constitutionally tax the property involved. But, as Justice Holmes, speaking for the Court in *Miller* v. *Milwaukee*, 272 U. S. 713, 715, said:

> If the avowed purpose or self-evident operation of a statute is to follow the bonds of the United States and to make up for its inability to reach them directly by indirectly achieving the same result, the statute must fail even if but for its purpose or special operation it would be perfectly good.

There, and again in *Macallen Co.* v. *Massachusetts*, 279 U. S. 620, the Court looked through the language of a statute to find that it was in fact directed at tax-exempt property, and in each case held the statute invalid for that reason.[1] Here there is no need to look

[1] In both cases the tax-exempt income at which the statutes were directed included income exempt under state law as well

through language since the purpose is plainly written on the face of the statute.

Appellees rely on *Esso Standard Oil* v. *Evans*, 345 U. S. 495, as authority supporting a tax directed at the use of tax exempt property:

> In the Esso case the state was taxing Esso because of its possession of government-owned property for storage. * * * Tennessee taxed the privilege of "storing" tax-exempt property in connection with a business conducted for profit. [Appellees' Br. Nos. 37 and 38, p. 17.]

Such a statement of the case is incorrect. Tennessee did not tax Esso *because* the gasoline it stored was tax-exempt. Nor did it tax the "privilege of storing tax-exempt property." We submit that such a tax would have been invalid. Tennessee imposed a general tax "for the privilege of storing gasoline measured by the amount stored during the month" (345 U. S. at 498). The Court pointed out (345 U. S. at 499)

> This tax was imposed because Esso stored gasoline. It is not, as the *Allegheny County* tax was, based on the worth of the government property.

Unlike the Tennessee statute involved in the *Esso* case, the Michigan act is not only "based on the worth of the government property" but is directed solely at those who deal with tax-exempt property. The implied immunity of United States property cannot be

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as that resulting from Federal immunity. But the statutes were found invalid, the Court pointing out in *Miller* v. *Milwaukee*, 272 U. S. 713, 715, that the Federal immunity "certainly is the most conspicuous instance of exemption at the present time." The same is, of course, true under the Michigan statute here involved.

overcome by an offsetting tax directed solely at tax-exempt property.

II

BY LEGISLATION DECLARATORY OF EXISTING LAW CONGRESS HAS FIXED THE VALUE OF THE LESSEE'S INTEREST AS THE LIMIT UP TO WHICH LEASED GOVERNMENT PROPERTY MAY BE TAXED

Our brief on the merits in No. 26 concluded as follows (pp. 27–28):

> The Military Leasing Act authorized local taxation of the lessee's interest in the property here involved. The Michigan statute is invalid because it ignores that limitation and seeks to reach the entire governmental interest in the property.

Appellees in Nos. 37 and 38 do not discuss the Military Leasing Act other than in one sentence (Br. p. 26) to the effect that we concede that Continental's possessory interest is subject to tax. Appellee in No. 26 argues briefly that Section 6 of the Military Leasing Act of 1947 is not applicable since the tax here is imposed on "the privilege of using" the property, not on the "lessee's interest" (Br. pp. 24–25). But the right to use the property and the lessee's interest are one and the same thing. Michigan's Public Act No. 189 not only violates the implied immunity of Federal property from state taxation in the absence of statute, but violates the statutory immunity established by the Military Leasing Act.

Whatever may be the scope of the implied immunity from local taxation conferred on United States property by the Constitution, Congress may by legislation define the line between what may be

taxed and what may not. In order to protect functions validly authorized Congress may, under the necessary and proper clause, expand the scope of Federal immunity beyond what it would be in the absence of statute. *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21, 33. In particular, Congress may make government contractors immune from local use and sales taxes. *Carson* v. *Roane-Anderson Company*, 342 U. S. 232. On the other hand, Congress may waive the immunity from local taxation which federal-owned property otherwise enjoys. In the field of local taxation of government-owned defense plants leased to private corporations Congress has acted. As we point out below, *infra*, pp. 19–25, Congress has in recent years given this problem a great deal of attention. Prior to the assessment of the taxes here involved, Congress had adopted the Military Leasing Act of 1947, 61 Stat. 774 (see Gov. Br. No. 26, pp. 30–33), which indicates the extent to which Congress permits the taxing of a lessee of a government-owned defense plant.

A. THE MILITARY LEASING ACT OF 1947 AUTHORIZES LOCAL TAXATION OF A LESSEE'S INTEREST, BUT NOT OF ANY VALUE REPRESENTING THE GOVERNMENT'S OWNERSHIP INTEREST

Section 6 of the Military Leasing Act of 1947 provides:

> The lessee's interest, made or created pursuant to the provisions of this Act, shall be made subject to State or local taxation. Any lease of property authorized under the provisions of this Act shall contain a provision that if and to the extent that such property

> is made taxable by State and local governments by Act of Congress, in such event the terms of such lease shall be renegotiated.

The legislative history of this section, the language itself, and the prior construction of the Act by this Court, all demonstrate a Congressional understanding and intent that local authorities may tax the lessee's interest measured by the value of that interest, but may not tax value of Government-owned property which represents the Government's ownership interest.

In the hearings before the House Committee on Armed Services, Mr. Kenney, Assistant Secretary of the Navy, discussed with the Committee what would be the status of the defense plants if the leasing act were passed (Hearings before the House Committee on Armed Services on H. R. 3471, 80th Cong., 1st Sess., p. 2353):

> Mr. SHAFER. * * * Now, in that connection the question has been raised as to taxes on this property to the lessee, in view of recent court decisions and so on.
>
> What do you recommend that the committee might do to at least assure local governments of taxes on this property that is to be leased?
>
> Mr. KENNEY. Of course, under existing law that portion of the property which the Government has title to would not be subject to local taxes. Would not the leasehold interest of the lessees be subject or could it not be made subject to taxes?
>
> Mr. SHAFER. I think it should be made subject to taxes.
>
> * * * * *

Mr. KENNEY. Unless the local laws make the leasehold interest taxable, there would be no taxes accruing to the local community.

* * * * *

Mr. BLANDFORD. Couldn't we incorporate a clause in the bill that for local tax purposes this property shall be deemed to be owned by the lessees only for that purpose, thus leaving the local governments free to tax these people who have leased this property on a long-term lease; and that could be considered in the money you receive as compensation.

Mr. KENNEY. I seriously question whether that would be the wise way to handle it because you may have an extremely valuable piece of property worth many millions of dollars, yet its value to the lessee is relatively small, and it is advantageous for the Government to have somebody in there using it, if for no other purpose than the fact that he is maintaining it as a going concern and not as a dead, dormant factory, with its smokestacks idle; and yet the person might not be willing to lease it if he felt he was going to have to pay a tax on the full value of that property.

Before the Congress the Government's position was thus that it wanted authority to enter into long-term leases on defense plants under which the lessee would be subject to tax on its leasehold interest, but would not "have to pay a tax on the full value of that property." There can be no doubt that in approving the bill the House Armed Services Committee understood that under the leases which that bill would authorize the lessee could not be required to pay taxes based on the full value of the property leased.

The Committee added what is now the second sentence of Section 6, a section which did not appear in the bill as submitted. This sentence provided that each lease should contain a provision that if and to the extent that such property is made taxable by local authorities "by Act of Congress" then the terms of the lease should be renegotiated. This language demonstrates the Congressional understanding that the imposition of such taxes could only come about by Act of Congress.

The Hearings before the Senate Armed Services Committee on the Military Leasing Act, during which the first sentence of Section 6 was drafted, are equally explicit as to the Congressional understanding. We have reprinted in Appendix A, *infra*, pp. 26-36, discussion in that Committee on this point. (Hearings before the Senate Committee on Armed Services on S. 1198 (H. R. 3471), 80th Cong., 1st Sess., a Bill to Authorize Leases of Real or Personal Property by the War and Navy Departments, pp. 27-32). There it was categorically stated at the outset that if this property was to be taxed by state and local authorities it would have to be by an act of Congress. Senator Baldwin proposed an amendment to the bill in the following language (p. 28):

> Property leased to private persons, corporate or individual, pursuant to the provisions of this act, shall be subject to State and local taxation in accordance with such State and local law.

This suggestion was not adopted. The Senator later proposed (p. 30) that a lease for a term of one or more years should "for the purpose of taxation alone

be deemed to transfer a title in fee simple for the purpose of the lease." This suggestion also was not adopted.

Secretary Royall explained his understanding of the scope of the existing immunity of United States property (p. 31):

> As I say, I understand the possessory interest tax has been applied, and I think it is constitutional. That would apply to this situation if it is constitutional, and I imagine it is.
>
> You could say in this statute, if there is any question about that, that the possessory interests of the lessee should be subject to local tax.
>
> * * * * *
>
> Mr. KENNEY. Your State could make the leasehold interest itself taxable, which I think should be all that could be taxable.
>
> Senator BYRNES. That is right. Say the lease was for 5 years. You could take up the value of the lease, which would be an infinitesimal part of the value of the property.

There was further discussion to the effect that a leasehold interest could be taxed "without us doing anything about it." "So why should we put anything in?" (p. 31). Secretary Royall saw no objection to putting it in if there was any question about it. The language was then drafted which is now the first sentence of Section 6 of the Leasing Act providing that the "lessee's interest * * * shall be made subject to State or local taxation."

The legislative history of this provision thus makes two points abundantly clear: (1) that Congress authorized the leasing of defense plants on the understanding

that, under the constitutional immunity, the leasehold interest in Government property was the only value subject to local taxation; and (2) that for leases made under the Military Leasing Act of 1947 it was explicit that the value of the lessee's interest, and only that value, was to become subject to such taxation.

This Court recently considered Section 6 of the Military Leasing Act of 1947 in *Offutt Housing Co.* v. *Sarpy County*, 351 U. S. 253. There, local authorities were taxing a lessee for buildings and improvements held at nominal rent under a long-term lease. All members of the Court agreed that the local taxing authority had no power to tax more than the lessee's interest. A majority of the Court found that the value by which the tax was being measured did not, under the circumstances, exceed the lessee's interest:

> Petitioner also argues that the state tax, measured by the full value of the buildings and improvements, is not on the "lessee's interest," but is on the full value of property owned by the Government. * * * The lease is for 75 years; the buildings and improvements have an estimated useful life of 35 years. The enjoyment of the entire worth of the buildings and improvements will therefore be petitioner's.
>
> * * * * *
>
> In the circumstances of this case, then, the full value of the buildings and improvements is attributable to the lessee's interest.[1]

[The Court's footnote is as follows:]

> [1] The record before us is unclear whether the estimated useful life of all the appliances and furniture is less than the lease period. To the extent that the estimated

> useful life of any of these items extends beyond the term of the lease, *the value* attributable to such period *must be excluded from the tax, since it represents the Government's ownership interest.* * * *
>
> [351 U. S. at 261, 262; emphasis added.]

The majority opinion thus clearly indicates that a tax on the lessee's interest cannot be measured by more than the value of that interest.

Four members of the Court dissented, believing that under the circumstances the lessee's interest was less than the full fee value, and that the tax could not be measured by that value. All members of the Court thus agreed that under the Military Leasing Act of 1947 no more than the lessee's interest could be taxed. There is no suggestion in the opinions that in the absence of the Military Leasing Act a tax could be measured by a greater interest.

The Borg-Warner lease, involved in No. 26, was made pursuant to the Military Leasing Act of 1947 (R. 62). Under Section 6 of that Act it is the "lessee's interest" which "shall be made subject to State or local taxation." The second sentence of Section 6 indicates that the "property" leased shall not be taxable except by further act of Congress. Although the Act itself contains no express prohibition against a state's imposing a tax on the Government's interest in leased property, we submit that the legislative history reviewed above removes any doubt as to the meaning of the Military Leasing Act, and that for leases made under that Act the only value which is

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[2] It should be noted that Sarpy County did not attempt, as do appellees here, to tax the value of the land itself.

subject to local tax is the value of the lessee's interest.

The arrangements under which Continental Motors occupied the United States property in Muskegon, involved in Nos. 37 and 38, were not stated to be under the Military Leasing Act of 1947, but rather under the First War Powers Act of 1941, c. 593, 55 Stat. 838 (R. 123) and the Armed Services Procurement Act of 1947, c. 65, 62 Stat. 21 (R. 82, 86, 115). These contain no authorization to tax even the lessee's interest. But we believe that the Military Leasing Act of 1947 is declaratory of the law in this regard and that the same substantive standard applies to both cases. The Congressional discussion referred to above indicates a general understanding that the value of a leasehold interest could be taxed by a local authority without express statutory consent, and we accept that view. Certainly, however, that discussion would provide no support for the theory that the interest of a lessee terminable at will could be taxed to a greater extent than that of a long-term lessee under the Military Leasing Act of 1947. It is inconceivable that Continental's "interest" in the Muskegon property is more subject to local taxation under the rule of implied immunity than is Borg-Warner's interest expressly made subject to local taxation in the Military Leasing Act of 1947.[8]

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[8] As pointed out in our brief in Nos. 37 and 38, Continental was simply working on United States property to make items for the United States. It was engaged exclusively in the Government's business on the Government's property. If it could be taxed for the "privilege of using" United States property, presumably Virginia could tax the Secretary of Defense for the "privilege of using" the Pentagon—measured by the value of that building.

B. A TAX ON THE LESSEE'S RIGHT TO USE GOVERNMENT PROPERTY IS A TAX ON THE LESSEE'S INTEREST, AND MAY BE MEASURED BY NO MORE THAN THE VALUE OF THAT INTEREST

Although the legal incidence of a tax may be important, the particular words used by a state are not controlling. The tax here imposed is on "lessees and users of tax-exempt property." (R. No. 26, p. 49.) The Supreme Court of Michigan has stated (R. No. 26, p. 56) that—

> * * * the tax imposed is not *ad valorem* on the property nor on the leasehold, but a specific tax on the privilege of using the property * * *.

We submit that the privilege or right of using the Government's property is what the lessee has by virtue of the lease, and that a tax on such a right is a tax on the lessee's interest.

We first note that the "privilege" of using tax-exempt property belonging to the United States is not something within the control of the state of Michigan. Cf. *Leslie Miller, Inc.* v. *Arkansas*, 352 U. S. 187. This is not like a tax on the privilege of being a druggist, or a butcher, or a storer of gasoline, which may properly be considered as a "privilege" of doing business, subject to state control and taxation. There is no separate occupation of being a user of tax-exempt property. The United States determines who shall lease its property. The only right or privilege which that person has with respect to the property is conferred by the lease.

Appellees say that they are imposing a tax on the lessee's privilege of using the Government's property, not on the lessee's interest in the property (Ap-

pellee's Br. No. 26, p. 25). But the two are precisely the same. Appellees do not attempt, nor are they able, to distinguish between them. The "lessee's interest", and the only interest the lessee has in the property, is the privilege of using it for a period of time under stated conditions. By imposing a tax on the lessee's privilege of using the property Michigan is imposing a tax on the lessee's interest in the property.

Appellees in Nos. 37 and 38 aptly quote Mr. Justice Cardozo in *Henneford* v. *Silas Mason Co.*, 300 U. S. 577, 582 (Br. p. 5):

> The privilege of use is only one attribute, among many, of the bundle of privileges that make up property or ownership.

But the privilege of use is the very ownership interest which the United States has, by lease, conveyed to Borg-Warner and Continental. The privilege of use is the very interest which these lessees have as lessees. In imposing a tax on that privilege appellees are imposing a tax on the lessees' interest in Government property, and the tax cannot be based on more than the value of their property interest. Similarly, it is our view that a "use" tax could not be validly imposed on Government-owned equipment used by a contractor. Certainly, it could not be so imposed unless the contractor had an independent property interest in the equipment and the tax were measured by the value of that limited interest.

If the privilege of use should not be considered identical to the lessee's entire interest in the property, it is certainly a portion of the lessee's interest and con-

tained within it. The lessee might be thought to have other rights and privileges, but at least one of them is the right or privilege of using the Government's property in connection with a business conducted for profit. What Michigan is purporting to tax is either the lessee's entire interest or a portion of it. And we submit that in either case the limit on the measure of the tax is the same. By taxing a portion of the lessee's interest Michigan cannot tax a greater value than it could by taxing all of it.

The Military Leasing Act of 1947, in this respect declaratory of existing law, has fixed the value of the lessee's interest as the maximum limit up to which leased Government property is subject to local taxation. The interest of a lessee in real property is a well recognized concept in the law. This Court has considered the elements which should be taken into account in determining its value. See *United States* v. *Petty Motor Co.*, 327 U. S. 372, 381. The value of a lessee's right to use property is involved in every condemnation case where there was a non-terminating lease in effect. Michigan may no more claim that that right is properly measured by the full fee value of the property than could a lessee whose interest had been condemned.

III

DETERMINING THE STANDARDS AND METHODS OF FINANCIAL CONTRIBUTION TO LOCAL JURISDICTIONS ON ACCOUNT OF GOVERNMENT-OWNED REAL PROPERTY IS A MATTER FOR CONGRESS

Appellees argue that it is for this Court to draw the line between those interests in United States prop-

erty that may be taxed (and to what extent) and those interests which may not:

> The issue is a judicial one rather than one for the legislature. Just as the whole doctrine of governmental immunity had its origin in a decision of the court, it is for the court to determine the proper scope and application of the doctrine in the light of the realities of present-day affairs. [Appellees' Br. Nos. 37, 38, p. 30]

But the fact that the Court decided *McCulloch* v. *Maryland*, 4 Wheat. 316, does not require it to consider each local taxing statute as though Congress had not legislated in the field.

In *United States* v. *Allegheny County*, 322 U. S. 174, 190–191, the Court stated:

> The equities in this unfortunate conflict between the United States and one of its most important industrial communities are not capable of judicial ascertainment or equalization. Whether a county loses more than it gains by such federal activity and what other federal benefits ought to be considered if a balance were to be struck between advantages and disadvantages, we cannot say. The adjustment of benefits and burdens is for other departments, and studies to that end have been undertaken. We can only say that our constitutional system as judicially interpreted from the beginning leaves no room for the localities to impose either compensatory or retaliatory taxation on Government property interests. Their remedy lies in petition to the Federal Congress, which also is their Congress.

In the thirteen years that have passed since that opinion was written it has become even more clear that neither local authorities nor the courts can determine the extent to which financial contribution should be exacted with respect to Federally-owned real property. Congress is the only body with both the authority and the means at its disposal to deal with the problem. And Congress has been active in the field.

A. CONGRESS HAS GIVEN DETAILED ATTENTION TO THE PROBLEM OF TAXES AND PAYMENT IN LIEU OF TAXES FOR GOVERNMENT-OWNED PROPERTY

We have gathered in appendices to this brief some indication of the amount of attention which Congress has devoted to the problem of providing local jurisdictions with funds to compensate them with respect to tax-exempt Federal property. Listed in Appendix B *infra*, p. 37, are most if not all of the bills which have been introduced on this subject since the 80th Congress. It will be seen that there are some 25 bills which have been introduced in the Senate during this time and almost 100 bills which have been introduced in the House. A large number of these are proposals to authorize local authorities to tax the full value of real property owned by the United States. Some deal specifically with the problem of government-owned plants leased to private persons. E. g., H. R. 4887, 84th Cong.; H. R. 8454, 82d Cong. Proposed legislation, which would make such government-owned plants subject to taxation by the local authorities, has not been adopted.

Congress has devoted substantial time to the study of the complicated problems involved. Listed in Appendix C, *infra*, p. 49, are some of the hearings which have been held. Also listed there are reports and studies which have been made for the Congress. A glance through these lists will indicate the detailed attention which this problem has received and is receiving from Congress.

B. THE PROBLEM OF COMPENSATING LOCAL AUTHORITIES WITH RESPECT TO UNITED STATES PROPERTY WHICH IS NOT TAXABLE IS HIGHLY INTRICATE, AND BEST HANDLED BY LEGISLATION

A perusal of the materials referred to in Appendices C and D will indicate the complexity of the problem involved in these cases. If a state can, without the consent of Congress, tax the value of industrial plants on the theory that it is taxing the privilege of using them, what is the consequence as to other property of the United States? Can states tax the value of Federal grazing lands to those who have the privilege of grazing cattle and sheep on them? Can they tax the value of national forests or Government irrigation projects to those who have the privilege of using them? The myriad of problems involved as a consequence of the Federal immunity of different categories of Government-owned property are well summarized in the Report on Taxes and Other In-Lieu Payments on Federal Property, prepared by the Legislative Reference Service, Library of Congress, for the use of the House Committee on Interior and Insular Affairs, 83rd Cong., 2d Sess., Committee Print No. 23, pp. 27–90.

A range of other problems relate to the basis for calculating payment, if any, and for distinguishing among those cases where payment should be based on benefits received or services rendered, those where it is more fairly based on assessed value, and those where it is best calculated as a portion of the income derived by the Government from the property. Where a community has grown up around a Federal installation the problem is quite different from the case where property currently being taxed is taken off the tax rolls.

Any examination demonstrates that the problem is one calling for a flexibility of treatment which is possible only by legislative sanction.

C. WHERE CONGRESS HAS CONSIDERED IT DESIRABLE, IT HAS WAIVED ITS IMMUNITY, PROVIDED PAYMENTS IN LIEU OF TAXES, OR AUTHORIZED OTHER MEANS OF DEALING WITH THE PROBLEM

For over a century Congress has acted to provide the states with taxes or payments in lieu of taxes for United States property in circumstances where it considered such payments necessary or proper. See Act of May 14, 1834, 4 Stat. 673, 675; Act of March 3, 1851, 9 Stat. 598, 615; Act of Aug. 31, 1852, 10 Stat. 76, 83.[4] In recent years Congress has enacted a large body of legislation in the field. Listed in Appendix D, *infra*, pp. 51–58, is legislation dealing with this problem.[5]

[4] See the debate on the appropriation to pay Pennsylvania a property tax on the United States mint, Cong. Globe, 31st Cong., 1st Sess., 1644 (1850). The appropriation was passed, 9 Stat. 523, 541, but apparently the judgment it was designed to meet was later annulled by the Pennsylvania legislature. Cong. Globe, 31st Cong., 2d Sess., 394, 399 (1851).

[5] The list of legislation is based on a study made in 1954, which was said to be current as of that time.

In some cases Congress has permitted non-discriminatory state and local taxation. This policy apparently dates back to 13 Stat. 112 (1864) when Congress permitted the taxation of the real estate of national banks, which would have been immune but for the consent. Property held by the Commodity Credit Corporation, Federal Deposit Insurance Corporation, and a number of other agencies is subject to local taxation. So is property acquired under the alien property laws or by the Veterans Administration through foreclosure. Other situations are handled by payments in lieu of taxes. Property acquired by the Atomic Energy Commission is illustrative of this category.

Another method of making payments to local authorities with respect to tax-exempt real property is to grant the state a portion of income from the property. For example, 25% of money received from a national forest is paid to the state in which the forest is located. Forest lands are in a way comparable to the leased property involved in the instant cases. It is tax-exempt property which private persons are allowed to use for profit. Rather than granting to the states the right to tax the privilege of using the forest lands, Congress has granted to the states a portion of the revenue which the lands earn.

Still another method is demonstrated by Public Laws 874 and 815, 81st Congress, as amended. These Acts authorize Federal financial assistance to local educational agencies affected by activities of the Federal Government. The amount of assistance takes into account the number of children in average daily attendance at state schools who either live on Federal prop-

erty or live with a parent who works on Federal property.

This entire legislative structure is based on the premise that the states do not have the power to tax the value of Federally-owned property. To hold that in the absence of Congressional action Michigan has the power to tax the privilege of using United States property, and may measure the tax by the full value of that property, would undercut much if not most of the legislation in the field. The problem with which all these laws deal is not one of form, but of substance. Congress has been dealing with the substantive problem of determining the proper methods of making financial contribution to local jurisdiction with respect to United States-owned property. Michigan may not, by changing the name of its tax, gain a right which Congress has been unwilling to grant.

D. CONGRESS HAS CONSIDERED SOME OF THE PROPERTY INVOLVED IN THESE CASES AND HAS AUTHORIZED PAYMENTS WITH RESPECT TO IT

In considering appellees' argument that it is not for Congress but rather for this Court "to determine the proper scope and application of the [governmental immunity] doctrine in the light of the realities of present-day affairs" (Br. Nos. 37 and 38, p. 30), the Court should consider the fact that Congress has, by legislation, authorized payments to appellees with respect to property involved in this litigation.

Under Public Law 874 of the 81st Congress enacted in 1950 (64 Stat. 1100; extended to June 30, 1958 by 70 Stat. 968), payments are authorized to federally affected school districts for current operating ex-

penses. The Orchard View School District, one of the appellees here in Nos. 37 and 38, has received payments under this legislation—payments made because of the property which is owned by the United States and occupied by Continental. The 5th Annual Report of the Commissioner of Education on the Administration of Public Laws 874 and 815, page 35, indicates that the Orchard View School District received $15,605* during fiscal year 1955. The 6th Annual Report, page 41, shows that during fiscal year 1956 it received $15,596. Congress having adopted a legislative formula to determine the amount by which the United States should support the Orchard View School District because of the Government-owned and hence tax-exempt property in Muskegon, it is not for that school district, or for Michigan, to adopt a different one.

Again, in 1954, Congress legislated with respect to the tax status of the Government-owned property in Muskegon involved in the Continental case. Public Law 388, 84th Congress, 69 Stat. 721, authorized payments in lieu of taxes on property transferred from the Reconstruction Finance Corporation. This law was designed as a temporary measure to expire December 31, 1958, the hope being that by that time Congress would be able to enact more comprehensive legislation dealing with the problem.

House Report 1453, on H. R. 6182, 84th Cong., 1st Sess., which became Public Law 388, shows that Con-

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*We are informed that this is a preliminary figure (which should have been marked with a single, not a double, asterisk) and that the final figure received by the school district was actually $21,777.04.

gress had before it the very problem of the plant operated by Continental at Muskegon. That report lists the properties which would be subject to payments in lieu of taxes. Prominent on that list (the second largest plant involved, judging by the annual tax payments on the property at the time of transfer) is the Government-owned plant at Muskegon operated by Continental.

Congress has had before it the vast and complicated problem of resolving the equities between local communities and tax-exempt property owned by the United States. It has repeatedly legislated in this field, providing payments in lieu of taxes or authorizing local authorities to tax the value of the Government's interest. The premise upon which all such legislation is based is that, absent legislation, local authorities may not measure a tax by the value of the Government's property. A decision upholding Public Act No. 189 of Michigan would not provide an appropriate framework for settling the substantive problems. It would rather provide one additional, and unexpected, complication to a legislative problem with which Congress has been dealing and must continue to deal.

Respectfully submitted.

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NOVEMBER 1957.

APPENDIX A

SENATE COMMITTEE DISCUSSION ON SECTION 6 OF THE MILITARY LEASING ACT OF 1947

EXCERPT FROM HEARING BEFORE THE SENATE COMMITTEE ON ARMED SERVICES ON S. 1198 (H. R. 3471), 80TH CONG., 1ST SESS., A BILL TO AUTHORIZE LEASES OF REAL OR PERSONAL PROPERTY BY THE WAR AND NAVY DEPARTMENTS, PAGES 27–32 (JULY 19, 1947)

* * * * *

Senator BYRD. I would like to ask about section 6 in regard to taxation. Does that mean that if this property is taxed by the State and local governments, it would have to be by an act of Congress?

Mr. KENNEY. It would, sir.

Senator BYRD. Of course, there is a question involved there of taking these plants and leasing them to private companies and the private companies making a profit. It is a question of whether or not they should not pay taxes to the local and State governments.

Mr. KENNEY. My own feeling is, Senator, that taxes should be paid on property that is used for that purpose. The Federal Government in making its terms of lease should agree with the local authorities that they will pay the amount of taxes that would otherwise have accrued.

Senator BYRD. Can you do that legally if the title is vested in the Government itself?

Mr. KENNEY. You can do it only if Congress so authorizes.

Senator BYRD. This is no authorization.

Mr. KENNEY. Section 6 is no authorization; that is true.

Senator BYRD. You would have to get a special act through or some general act. As long as you are going into this, you might give consideration to it; because if it is used for private leasing and profit, it does look like they should pay taxes.

The CHAIRMAN. Otherwise, their competitors would be at a disadvantage.

Mr. KENNEY. No. We would certainly take that fact into consideration in the amount of rental we would require be paid.

Senator HILL. And the local community or certainly the county needs that tax money no doubt.

Senator BYRD. Some of these cost 30,000,000. That is a big proposition.

Mr. KENNEY. Mr. Cox says there are 17 bills which have been introduced in the House to deal with that subject. It is a dreadfully complicated subject, and this bill does not change anything with respect to that particular situation.

Senator BYRD. But you are going into a new thing. These war plants operated for the war. Now, you are going into the peace and you are leasing them to private industry. Private industry is going to make a profit, naturally. They are going to be in competition. You have got three or four big aviation plants here, Curtiss-Wright, Whitney, and so forth, and they are worth, roughly, I should say, about $100,000,000. They will be nontaxable in competition with other airplane production plants that will be taxed.

Mr. KENNEY. Well, what we do under this bill in no way increases or decreases the amount of taxes to which these properties may be subject.

Senator BYRD. But you are undertaking something we have not done before. Instead of selling it as surplus property, you are retaining them for future emergency. I think that is wise. Then you are operating them and leasing them to private companies. That is a new situation; is it not?

Mr. KENNEY. That is correct, Senator.

Senator BYRD. It looks to me like there should be some provision somewhere in there. They have taken over Arlington, Va. There are no plants there, but they have taken nearly the whole of Arlington County away from taxation. I know what it means.

Mr. KENNEY. It is a very serious thing, and it is a subject on which I feel quite strongly, because I think the Government owns more land in my State of California than probably any other State in the Union, and in certain counties it has created a very bad situation.

The CHAIRMAN. Why can you not say the commercial firm leasing these buildings and plants shall be subject? Why can you not say that in this bill?

Mr. KENNEY. The local authorities, the States, would have authority to make a leasehold interest taxable. I believe in certain States leasehold interests are subject to taxation.

Senator HILL. Is that not true in a small number of States?

Senator TYDINGS. What effect would that have on the price of the lease the Government would attempt to negotiate?

Mr. KENNEY. The amount that the Government would receive under those circumstances would be less, I presume.

Senator TYDINGS. It also would make it more difficult to keep the plant or put the plant in use, would it not?

Mr. KENNEY. It would, sir.

Senator TYDINGS. So the net result is that while the local community would get a little money if they leased the plant, there is a good probability that they might not be able to lease the plant because there are very large and tremendous buildings. The net result would be that in that case the local community would not get any revenue and the Government would not get any revenue either; and the plant would fall into disrepair from lack of use.

Mr. KENNEY. That is correct.

Senator TYDINGS. Our choice would be to get a little money for the local governments, as a possible inducement on the one hand at the expense of maybe not leasing the plant and not having it in operation, and keeping money out of the Federal Treasury on the other hand.

Senator BYRD. I think that single item would enter into the success or failure of plants worth 30 or 40 million dollars, but as I see it, you are allowing private ownership to compete with other private ownership, and one is exempt from taxes and the other is not.

Senator BALDWIN. What would you think about this language? [Reading:]

> Property leased to private persons, corporate or individual, pursuant to the provisions of this act, shall be subject to State and local taxation in accordance with such State and local law.

Would that provision answer the question? Of course, you would have the problem of whether or not if the fee still remained in the Government, as it would under this bill, you would have a taxable interest there that the local people could tax at all; but they could certainly tax personal property in the

plant, the machinery and things that might be used in connection with it.

Senator TYDINGS. Not unless title was in the lessee.

Senator BALDWIN. Yes.

Senator BYRD. It may be that there are quite a number of instances in addition to this that will come under the general policy of retaining these plants for future emergency and in the meantime leasing them to private companies.

Mr. ROYALL. Mr. Chairman, on this question, we discussed it pretty fully in the House, and the views of the War Department are these: That any property used for commercial purposes in any State, even though the title is in the Government, is certainly property that should be taxed by the local government.

As a matter of fact, we stated, I think, to the committee, both the Army and Navy, we had no objection to a provision of that kind. The reason the committee did not insert it, as I gather, was because of the complications of it. They thought it ought to be provided by other general legislation.

The principal complication is this: In some of these plants we can lease only a small portion of it, and it is almost impossible to segregate it. It may not be all together. The Government will have to maintain part and the lessee part.

Also we have in some of these agreements as a part of the rental the fact that they maintain the Government's part and in some cases we probably will not get any rental. The part they would use is small as compared with the total, and their rental would be the maintenance of the rest.

Those are the reasons. We have no objection, and I assume the Navy does not either, to an insertion that the part that they use can be taxable. How-

ever, that would still present some complications in administration.

The CHAIRMAN. As I get it, then, it was the intention of the War and Navy Departments to get this authority. Then as you make the leases and you do have a tax problem come up where the local interests feel it should be taxed, then the Navy or the Army will come in with a recommendation as to the necessary law that Congress should pass to make that property taxable and treat each one separately, is that right?

Mr. ROYALL. We did not specifically have that in mind. That certainly could be done.

In our State there are large areas of land, and I am sure this is true in your State, where there is a pretty great hardship on local counties. That problem is under study.

Senator BYRD. If you do not get it in this bill, you are not going to get it. In some of these States, 80 or 90 percent of these profits are nontaxable. In Utah, 80 percent is nontaxable. They came from an original grant, as I understand it to the State. It certainly would not be quite fair for the Federal Government to pay 80 percent of the taxes of Utah to the localities. This is an entirely separate and distinct condition, as I see it.

Mr. KENNEY. We assured the House committee when the same question came up there that we would certainly take into account the fact that taxes were not paid on this property in negotiating our lease so that we would not be giving one person an advantage over a competitor.

Mr. ROYALL. That does not help the local community.

Senator BYRD. I know the difficulties of it.

Mr. KENNEY. It was my understanding that they did not want to put it in this bill because of the complicated nature of the problem, but they did put section 6 in, so that if any action was taken, we would then be in a position to proceed. They have many of these tax bills in the House. As a matter of fact, the Armed Services Committee is considering that subject itself.

Senator BYRD. We got the estimate the other day of these different bills. If they were passed, it would amount to about $2,000,000,000 to the Federal Government to pay taxes on all Federal Government property which is now nontaxable. That includes this vast amount of renting and everything else.

Mr. KENNEY. Of course, you can think of another aspect of the problem, Senator Byrd. You might also say that the State governments today in most instances are in better shape financially than the Federal Government is.

Senator BYRD. That is true, but it does not work equally. You take Senator Tydings and those in the adjacent counties of Maryland. Arlington County is now owned 70 or 80 percent by the Federal Government. Yet we are operating as a county. We have to maintain the sewage, roads, and everything else. We get no compensation for that whatever.

Senator BALDWIN. When these properties are leased, should not the lease for the term of the lease be termed a transfer, for the purposes of taxation, of a fee so that it would be taxable under the laws of a particular State, in such language as this:

> A lease of real property or personal property for a term of one or more years shall for the purposes of taxation alone be deemed to transfer a title in fee simple for the purpose of the lease.

I do not know what the property laws with respect to States are.

Senator TYDINGS. To get down to constitutional law, you would be taxing a man on property he did not own, and I am afraid it would not hold water. The mere fact we pass a law saying you shall consider he owns it does not make him own it, and you cannot tax a man for property he does not own.

I think your motive is a good one, but I do not think we can get to it in that fashion.

Senator BALDWIN. A lot would depend on what it said in the lease; would it not?

Senator TYDINGS. No. First of all, you would have to set up on the assessment books what the company actually owned. What he would own would be a lease. He would not own the property. Your law would not say that notwithstanding that he does not own any more than the lease, he shall be taxed on the property. He would go to the assessor and prove he only had a leasehold in it for 1 or 10 years. He could not be assessed more than his lease is worth. He could not be assessed for the physical value of the property because he does not own it. He could be assessed for what his lease is worth. That would be all.

Senator BYRD. Senator Tydings, of course, we could authorize the locality and the State to tax Federal property. The Federal Government could pay it.

Senator TYDINGS. That would help my county very much where they have taken an entire water front and I do not know how many square miles in the Aberdeen Proving Ground and Edgewood Arsenal.

Senator BYRD. I am speaking of these plants. I imagine that could be constitutional could it not, and they could add it to the lease?

Mr. ROYALL. I think the State of California and one or two other States now tax the possessor of the

interest in docks, and so forth, leased from the Government. I assume that is constitutional.

Senator TYDINGS. Secretary Royall, if we wanted to set up a plan of having the plants assessed by the local government, there is only one way in the world to do it, and that would be to transfer them to the local concern that wanted to lease them, to transfer the title to the local concern with a recapture clause and with certain conditions in if that they had to keep it in repair. In that event the entire title of the property would go to the local concern, and we could recapture it.

The only difference between that and the system we have been discussing is that we lease it and compel them to keep it up and keep the title in themselves. So if we had a reversion clause that at the end of the lease, or in the emergency of war, it shall revert in title fee simple to the Government, then each and every one of those properties could be properly taxed and would be taxed by the local authorities.

I do not see any other legal way to handle that will hold water except in that fashion. What do you think of that?

Mr. ROYALL. As I say, I understand the possessory interest tax has been applied, and I think it is constitutional. That would apply to this situation if it is constitutional, and I imagine it is.

You could say in this statute, if there is any question about that, that the possessory interests of the lessee should be subject to local tax.

Mr. KENNEY. A local taxing authority can make the leasehold subject to tax if they want to. That is a matter for the local legislatures to take care of.

Senator TYDINGS. You cannot make a man pay taxes on what he does not own.

Mr. KENNEY. Your State could make the leasehold interest itself taxable, which I think should be all that could be taxable.

Senator TYDINGS. That is right. Say the lease was for 5 years. You could take up the value of the lease, which would be an infinitesimal part of the value of the property.

Mr. ROYALL. Could not that be taken care of by a graduated tax, different types of property have a different type of tax?

Senator TYDINGS. Why not let them have it with a right of recapture?

Mr. ROYALL. The difficulty about it is this: Take, for example, the fact that we have got 47 stand-by plants, at least we hope to have. It costs the War Department an estimated $25,000,000 a year to maintain them. We are trying to lease parts of those plants, in some instances the entire plant, and we hope to get that additional cost down to $10,000,000 or $15,000,000. We have already leased enough to reduce it two or three million and we are proceeding to try to lease the others.

Senator TYDINGS. As a matter of fact, if the Government leases to corporation XB a plant for a period of 5 years without us doing anything about it, they would be taxable by each community in America that taxes leasehold property. So why should we put anything in?

Mr. KENNEY. I do not think you should put anything in this bill.

Senator TYDINGS. That is what I am getting at.

Mr. ROYALL. I do not see any objection to putting it in there if there is any question about it. You had some language here that the possessor of the leasehold interest pursuant to this act may be subject to local or State taxation. That would help.

Senator TYDINGS. Upon the lessee?

Mr. ROYALL. That is right.

Senator TYDINGS. But there ought to be something added to that.

Senator HILL. Something ought to go on there. As it is now, all you do is to say that in the event the State does come along and tax one of these lessees, you renegotiate the contract with them.

The CHAIRMAN. And probably get a lesser rent to cover the tax.

Mr. ROYALL. We would have to do that. They have got to know the basis on which they lease it.

Mr. KENNEY. In the absence of this purchaser being subject to taxes, we would insist on a larger rental.

The CHAIRMAN. Have you got the wording in shape now so you can read it off in full?

Mr. ROYALL. This does not read very smoothly. I think we can straighten it out.

Senator TYDINGS. How would it be to say that the lessee's interest in property may be subject to tax by local authority?

Mr. KENNEY. Any interest of the lessee created pursuant to the provisions of this act may be subject to local taxation.

The CHAIRMAN. Read it off in full, Mr. Secretary.

Mr. ROYALL (reading):

> The lessee's interest, made or created pursuant to the provisions of this Act, shall be made subject to State or local taxation.

The CHAIRMAN. Is that satisfactory? All right. Are there any further questions on this bill?

* * * * *

APPENDIX B

Bills Relating to Taxation of Federal Property

Following is a list of legislation which has been introduced in recent sessions of Congress relating to the taxation of United States property or to providing other payments with respect to it.

80th Congress

S. J. Res. 90	To establish a Commission to study intergovernmental fiscal relationships.
H. R. 14	Providing for taxation by the states and for political subdivisions of certain real property acquired for military purposes.
H. R. 581 H. R. 2030 H. R. 2726	Authorizing annual payments to States, territories and insular governments, for the benefit of their local political subdivisions, based on the fair value of the national forest lands situated therein.
H. R. 593 H. R. 1563 H. R. 6288	To provide for local taxation of real estate owned by the United States and for other purposes.
H. R. 741	Providing that certain real property, together with improvements thereon, acquired for military purposes, or for house projects, national parks, or monuments, shall not be exempt from taxation by the States or their political subdivisions.
H. R. 1062	To provide for the reimbursement of the town of Lancaster, Massachusetts, for the loss of taxes on certain property in such town acquired by the United States for use for military purposes.
H. R. 1681 H. R. 1761 H. R. 1949	To provide for payments to the States with respect to certain lands of the United States.

H. R. 2117 — To provide for the reimbursement of the town of Watertown, Massachusetts, for the loss of taxes on certain property in such town acquired by the United States for use for military purposes.

H. R. 2725 — Create a Commission on Federal Contributions to States and local governments by reason of Federal ownership of real property.

H. R. 3035 — Providing for payments to the State of Wyoming and for rights-of-way over and across Federal lands within the exterior boundary of the Jackson Hole National Monument, Wyoming.

H. R. 3271 — To provide for reimbursing Summers County, West Virginia, for the loss of tax revenue by reason of the acquisition of land by the United States for the Blue Stone Reservoir project.

H. R. 3537, H. R. 5984, H. R. 6767 — To authorize the participation of States in certain revenues from national parks, national monuments, and other areas under the administrative jurisdiction of the National Park Service.

H. R. 4022 — Providing for taxation by the States and their political subdivisions of certain real properties owned by the United States of America or its agencies.

H. R. 4537 — To provide for certain payments to States and their political subdivisions as compensation for loss of revenues occasioned by the acquisition of real property by the United States for military purposes.

H. R. 5029 — To provide for certain payments to States, territories and possessions and their political subdivisions as compensation for loss of revenues occasioned by the acquisition of real property by the United States for military purposes.

H. R. 5853 — To provide for State and local taxation of real estate in Arlington County, Virginia, owned by the United States.

81st Congress

S. 767 — To establish a national Commission on intergovernmental relations.

S. 810 — To establish a national Commission on intergovernmental relations.

S. 1946 — To establish a permanent national Commission on intergovernmental relations.

S. 3147 — To establish a temporary national Commission on intergovernmental relations.

S. J. Res. 41 — To establish a Commission to study intergovernmental fiscal relations.

H. R. 27 — Providing for taxation by the States and their political subdivisions of certain real property acquired for military purposes.

H. R. 110 — To provide for the reimbursement of the town of Lancaster, Massachusetts for the loss of taxes on certain property in such town acquired by the United States for use for military purposes.

H. R. 132 — To provide for certain payments to States and their political subdivisions as compensation for loss of revenues occasioned by the acquisition of real property by the United States for military purposes.

H. R. 445 — Providing for taxation by the States and their political subdivisions of certain real properties owned by the United States of America or its agencies.

H. R. 568 — To provide for payments to the States with respect to certain lands of the United States.

H. R. 865
H. R. 1355
H. R. 1356 — Creating a Commission on Federal Reimbursement to States and local governments by reason of Federal ownership of improved and unimproved real property.

H. R. 1389 — Authorize the participation of States, territories, and insular possessions in revenues from national parks, national monuments, and other areas subject to the primary administrative jurisdiction of the National Park Service, to provide for the acquisition of land within certain areas administered by the National Park Service and for other purposes.

H. R. 2065 — Providing that certain real property, together with improvements thereon, acquired for military purposes, or for house projects, national

parks, or monuments, shall not be exempt from taxation by States and their political subdivisions.

H. R. 2484.... Authorized grants to Ferry and Okanogan Counties, Washington, in lieu of taxes on certain lands restored to tribal ownership.

H. R. 3357.... Authorizing annual payments to States, territories and insular governments for the benefit of their local political subdivisions, based on the fair value of the national forest lands situated therein, and for other purposes.

H. R. 3359.... To provide for local taxation of real estate owned by the United States, and for other purposes.

H. R. 4194.... To provide for local taxation of real estate and improvements thereon owned by the United States and for other purposes.

H. R. 4214.... A bill authorizing annual payments to States, territories and insular governments, for the benefit of their local political subdivisions, based on the fair value of the national forest lands situated therein.

H. R. 4770.... Create a Commission on Federal Reimbursement to States and local governments by reason of federal ownership of improved and unimproved real property.

H. R. 5026.... To provide for the reimbursement of the States and their political subdivisions for the loss of tax revenue with respect to certain real property, and improvements thereon, acquired by the United States and used by the Armed Forces for recreational and welfare purposes.

82nd Congress

S. 437..... To establish a national Commission on intergovernmental relations.

S. 487..... To establish a temporary national Commission on intergovernmental relations.

S. 836..... To establish a temporary national Commission on intergovernmental relations.

S. 1146..... To establish a temporary national Commission on intergovernmental relations.

S. 2268 ..... Establishing a general policy and procedures with respect to payments to State and local governments on account of Federal real property and tangible personal property, and for other purposes.

H. R. 152 ..... To provide for the reimbursement of the States and their political subdivisions for the loss of tax revenue with respect to certain real property, and improvements thereon, acquired by the United States and used by the Armed Forces for recreational and welfare purposes.

H. R. 175 ..... To provide for local taxation of real estate and improvements thereon owned by the United States, and for other purposes.

H. R. 489 ..... Providing for taxation by the States and their political subdivisions of certain real properties owned by the United States of America or its agencies.

H. R. 2102 ..... Providing for taxation by the States and their political subdivisions of certain real properties owned by the United States of America or its agencies.

H. R. 942 ..... To provide for the reimbursement of the town of Lancaster, Massachusetts, for the loss of taxes on certain property in such town acquired by the United States for use for military purposes.

H. R. 1359 ..... Authorizing annual payments to States, Territories, and insular governments for the benefit of their local political subdivisions, based on the fair value of the national forest lands situated therein, and for other purposes.

H. R. 1864 ..... Providing for taxation by the States and their political subdivisions of certain real property acquired for military purposes.

H. R. 2417 ..... Creating a Commission on Federal reimbursement to States and local governments by reason of Federal ownership of improved or unimproved real property.

H. R. 2483 ..... Creating a Commission on Federal reimbursement to States and local governments by reason of Federal ownership of improved or unimproved real property.

H. R. 4321 ..... Creating a Commission on Federal reimbursement to States and local governments by reason of Federal ownership of improved or unimproved real property.

H. R. 2944 ..... To provide for the reimbursement of the Borough of Ringwood, New Jersey, for loss of taxes on certain property acquired by the United States.

H. R. 5223 ..... Establishing a general policy with respect to payments to State and local governments on account of Federal real property and tangible

Federal Power Commission

16 U. S. C. 810	Thirty-seven and one-half percent of the funds derived from licenses issued for occupancy and use of national forests and public lands shall be paid to the states in which they are located

Tennessee Valley Authority

16 U. S. C. 831l	Payments shall be made to states and counties equal to five percent of the gross proceeds from the sale of power, in lieu of taxes on property franchises and income.

personal property" by providing for the taxation of certain Federal property and for payments in connection with certain other Federal property, and for other purposes.

H. R. 8454 ... To provide for State and local taxation of real property which is owned by the United States and leased to private persons, and to prevent the leasing of real property owned by the United States for uses which violate State and/or local law, and for other purposes.

83rd Congress

S. 526 ... To establish a national Commission on intergovernmental relations.

S. 788 ... Establishing a general policy and procedures with respect to payments to State and local governments on account of Federal real property and tangible personal property and for other purposes.

S. 1328 ... To establish a temporary national Commission on intergovernmental relations.

S. 1544 ... To establish a Commission of governmental functions and fiscal resources.

S. 2173 ... To provide for payments by the Federal government to States or local taxing units adversely affected by Federal acquisition, ownership, or use of defense production facilities, to provide for the taxes of certain Federal properties and for other purposes.

H. R. 206 ... Providing for taxation by the States and their political subdivisions of certain real property acquired for military purposes.

H. R. 276 ... To provide for local taxation of real estate and improvements thereon owned by the United States.

H. R. 327 ...
H. R. 2092 ...
H. R. 2103 ... } Establishing a general policy with respect to payments to State and local governments on account of Federal real property and tangible personal property by providing for the taxation of certain Federal property and for payments in connection with certain other Federal property, and for other purposes.

H. R. 268 ..... To provide for the reimbursement of the States and their political subdivisions for the loss of tax revenue with respect to certain real property, and improvements thereon, acquired by the United States and used by the Armed Forces for recreational and welfare purposes.

H. R. 466 ..... Providing that certain real property, together with improvements thereon, acquired for military purposes or for house projects, national parks, or monuments, shall not be exempt from taxation by the States and their political subdivisions.

H. R. 2572 .....

H. R. 508 ..... Creating a Commission on Federal reimbursement to States and local governments by reasons of Federal ownership of improved and unimproved real property.

H. R. 552 ..... To provide for the reimbursement of the town of Lancaster, Massachusetts, for the loss of taxes on certain property in such town acquired by the United States for use for military purposes.

H. R. 1062 ..... To provide for State and local taxation of real property which is owned by the United States and leased to private persons, and to prevent the leasing of real property owned by the United States for uses which violate State and/or local law, and for other purposes.

H. R. 1863 ..... To provide for payments to the States with respect to certain lands of the United States.

H. R. 4460 ..... To provide for payments in lieu of taxes to be made to local taxing authorities with respect to Federal real property.

H. R. 5937 ..... Permitting the State and local taxation of certain tangible personal property title to which is in the United States.

H. R. 6531 ..... To provide for payments by the Federal government to States or local taxing units adversely affected by Federal acquisition, ownership, or use of defense production facilities, to provide for the taxation of certain Federal properties, and for other purposes.

H. R. 7401, H. R. 7782 — To provide for payments by the Federal Government to States or local taxing units adversely affected by Federal acquisition, ownership, or use of defense-production facilities, to provide for the taxation of certain Federal properties and for other purposes.

H. R. 9065 — A bill to provide for payments to States and territories and local governmental units thereof, and to the District of Columbia in lieu of real property taxes, with respect to certain real property owned by the Federal government.

84th Congress

S. 826 — To provide for payments by the Federal government to State or local taxing units adversely affected by Federal acquisition, ownership, or use of defense production facilities, to provide for the taxes of certain Federal properties, and for other purposes.

S. 888 — To make a temporary provision for the payment of taxes or the making of payments in lieu of taxes with respect to certain real estate held by government corporations or transferred by them to other government agencies, and for other purposes.

S. 1566 — Establishing a general policy and procedure with respect to payments to State and local governments on account of Federal real property and tangible personal property and for other purposes.

S. 1657 — To authorize taxes of certain Federal property by State and local tax authorities, to provide for the payment by Federal agencies of sums in lieu of taxes with respect to certain other Federal property, and for other purposes.

S. 2100 — To prohibit agencies of the United States from entering into contracts under which private contractors are constituted agents of the United States to purchase property necessary to carry out such contracts.

S. 2377	To amend the Federal Property and Administrative Services Act of 1949 to make temporary purchases for making payments in lieu of taxes with respect to certain real property transferred by Reconstruction Finance Corporation and its subsidiaries to other government departments.
S. 2390	To consent to the taxes of certain Federal property by State and local tax authorities, to provide for the payment to such authorities of sums in lieu of taxes with respect to certain other Federal property.
S. 2754	To authorize the taxation of certain Federal real property by State and local tax authorities.
S. 3534	To provide for payments in lieu of taxes to State tax authorities with respect to certain real property subject at the time of its acquisition by the United States to real property tax committed to the discharge of bonded indebtedness for any public improvement.
S. 3785	To provide for the making of payments to State tax authorities with respect to Federal real property of amounts equal to the sums which would be paid as special assessments thereon for public improvements if such land were privately owned.
H. R. 342 H. R. 4883	Establishing a general policy with respect to payments to State and local governments on account of Federal real property and tangible personal property by providing for the taxation of certain Federal property and for payments in connection with certain other Federal property; and for other purposes.
H. R. 457	Create a Commission on Federal reimbursement to States and local governments by reason of Federal ownership of improved and unimproved real property.
H. R. 786	Providing for taxation by the States and their political subdivisions of certain real property owned by the United States of America or its agencies.
H. R. 2021	To provide for payments in lieu of taxes to be made to local taxing authorities with respect to Federal real property.

H. R. 2408.... Create a Commission on Federal reimbursement to States and local governments by reason of Federal ownership of improved and unimproved real property.

H. R. 2991.... To provide for the reimbursement of the town of Lancaster, Massachusetts, for the loss of taxes on certain property in such town acquired by the United States for use for military purposes.

H. R. 4887.... To provide that Federal real property used primarily for the production of commodities commonly produced by private enterprise shall be subject to State and local real property taxation.

H. R. 7098....
H. R. 9536.... Establishing a general policy and procedure with respect to payments to State and local Governments on account of Federal real property and tangible personal property.

H. R. 8401.... To provide for local taxation of real estate and improvements thereon owned by the United States.

H. R. 11455... To provide for payments in lieu of taxes to State tax authorities with respect to certain real property subject at the time of its acquisition by the United States to real property tax committed to the discharge of bonded indebtedness.

H. R. 12167...
H. R. 12171...
H. R. 12173...
H. R. 12219... To authorize the payment to local governments of sums in lieu of taxes and special assessments with respect to certain Federal real property and for other purposes.

H. R. 1587.... To provide for payments by the Federal government to States or local taxing units adversely affected by Federal acquisition, ownership, or use of defense production facilities, to provide for the taxation of certain Federal properties, and for other purposes.

H. R. 1847.... To provide for payments to the States with respect to certain lands of the United States.

S. 6	To eliminate claims of immunity from State and local taxes based on contracts with the United States or its agencies or instrumentalities.
S. 30	To authorize the taxation of certain Federal real property by State or local tax authorities, and for other purposes.
S. 550	To provide for payments in lieu of taxes to State tax authorities with respect to certain real property subject at the time of its acquisition by the United States to real property tax committed to discharge of bonded indebtedness for any public improvement.
S. 967	To authorize payment to local governments of sums in lieu of taxes and special assessments with respect to certain Federal real property, and for other purposes.
S. 1104	Providing for the making of payments to the States and their political sub-divisions in lieu of taxes with respect to certain real property owned by the United States or its agencies.
S. 1573	To provide for the making of payments to state tax authorities with respect to Federal real property of amounts equal to the sums which would be paid as special assessments therefor for public improvements if such land were privately owned.
H. R. 256	Providing for taxation by the States and their political sub-divisions of certain real properties owned by the United States of America or its agencies.
H. R. 343	Creating a Commission on Federal reimbursement to States and local governments by reason of Federal ownership of improved and unimproved real property.
H. R. 631 H. R. 1196 H. R. 6568	Establishing a general policy with respect to payments to State and local governments on account of Federal real property and tangible personal property by providing for the taxation of certain Federal property and for payments in connection with certain other Federal property, and for other purposes.

H. R. 800	To provide for payments in lieu of taxes to be made to local taxing authorities with respect to Federal real property.
H. R. 1240	To provide for the reimbursement of the town of Lancaster, Massachusetts, for the loss of taxes on certain property in such town acquired by the United States for use for military purposes.
H. R. 2017	To authorize the payment to local governments of sums in lieu of taxes in special assessments with respect to certain Federal real property and for other purposes.
H. R. 5959	
H. R. 6469	To provide for payments in lieu of taxes to State tax authorities with respect to certain real property subject at the time of its acquisition by the United States to real property tax committed to the discharge of bonded indebtedness for any public improvement.

APPENDIX C

Congressional Hearings, Reports and Documents Relating to State Taxation of Federal Property

A PARTIAL LIST OF RECENT CONGRESSIONAL MATERIALS INDICATING THE ATTENTION CONGRESS HAS GIVEN TO THE PROBLEM OF PROVIDING LOCAL TAXING AUTHORITY WITH FUNDS ON ACCOUNT OF GOVERNMENT-OWNED TAX-EXEMPT PROPERTY

Hearings before the House Committee on Public Lands, H. R. 1288, H. R. 1305, H. R. 1578, H. R. 1658, H. R. 2246, H. R. 2338, H. R. 2724, H. R. 3119, H. R. 3161, H. R. 3166, H. R. 3359, H. R. 3424, 78th Cong., 1st Sess., Extension of Federal Liability to Localities for Real Estate Taxation or Payments in Lieu Thereof.

Hearings before the House Committee on Ways and Means, H. R. 10, 80th Congress, 1st Session, State Taxation of Federal Property.

Joint Hearings before the Subcommittees on Intergovernmental Relations of the House and Senate Committees on Expenditures in the Executive Departments, S. J. Res. 41, S. 767, S. 810, H. R. 2389, H. R. 3184, H. R. 3944, H. R. 4507, 81st Cong., 1st Sess., Establishment of a National Commission on Intergovernmental Relations.

Hearings before the Senate Committee on Government Operations, S. 1146, 82nd Cong., 1st Sess., To Establish a Temporary National Commission on Intergovernmental Relations.

Hearings before the Senate Committee on Government Operations, S. 526, S. 1328, S. 1514, 83d Cong., 1st Sess., To Establish a National Commission on Intergovernmental Relations.

Hearings before the Senate Committee on Government Operations, S. 2473 and H. R. 5605, 83d Cong., 2d Sess., Payments in Lieu of Taxes to States or Local Taxing Units.

Hearings before the Senate Committee on Government Operations, S. 826, S. 888, S. 1366, S. 1657, S. 2100, S. 2377, S. 2390,

84th Cong., 1st Sess., Payments of Taxes, or in Lieu of Taxes, to State or Local Taxing Units.

Hearings before the Senate Committee on Government Operations, S. 826, S. 1566, S. 1657, S. 2100, S. 2390, S. 2754, S. 3534, 84th Cong., 2d Sess., Payments of Taxes, or in Lieu of Taxes, to State or Local Taxing Units.

H. Rep. 2094, 78th Cong., 2d Sess. Study on Public Lands Problems Relative to Taxation of Public-owned Property.

S. Rep. 488, 81st Cong., 1st Sess. Establishing National Commission on Intergovernmental Relations.

S. Rep. 1856, 81st Cong., 2d Sess. Establishing Temporary National Commission on Intergovernmental Relations.

S. Rep. 544, 82d Cong., 1st Sess. Establishing Temporary National Commission on Intergovernmental Relations.

S. Rep. 215, 83d Cong., 1st Sess. Establishing Commission on Intergovernmental Relations.

S. Rep. 1966, 83d Cong., 2d Sess. Payments in Lieu of Taxes to States or Local Taxing Units.

S. Rep. 2424, 84th Cong., 2d Sess. Authorizing the Payment to Local Governments of Sums in Lieu of Taxes and Special Assessments with Respect to Certain Federal Real Property.

S. Rep. 1, 85th Cong., 1st Sess., pp. 11–21. Activities of the Senate Committee on Government Operations, Intergovernmental Relations.

H. Doc. 111, 76th Cong., 1st Sess. Federal Ownership of Real Estate and its Bearing on State and Local Taxation.

H. Doc. 216, 78th Cong., 1st Sess. Federal Contributions to States and Local Government Units with Respect to Federally-Owned Real Estate.

S. Doc. 81, 81st Cong., 1st Sess. Federal-State Relations.

Committee Print No. 23, House Committee on Interior and Insular Affairs, 83d Cong., 2d Sess. Report on Taxes and Other In-Lieu Payments on Federal Property.

APPENDIX D

Legislation Authorizing Taxation or Payments in Lieu of Taxes With Respect to Government-Owned Property

Following is a list of legislation (in effect as of 1954*) which provides for payments in lieu of taxes, authorizes taxation of otherwise immune property, or provides that revenue from Government-held property shall be shared with state or local authorities.

PROVISIONS FOR PAYMENTS IN LIEU OF TAXES ON FEDERAL PROPERTY

Atomic Energy Commission

42 U. S. C. 1869 (b)	Payments for property previously subject to taxation which has been acquired by the Commission

Department of Agriculture

58 Stat. 905	Payments for lands acquired in certain states for certain public works
16 U. S. C. 577g	Payments to the State of Minnesota for Superior National Forest lands
7 U. S. C. 1024	Payments for certain property held by the Farmers Home Administration.
40 U. S. C. 432-33 (1946 ed.); 50 App. U. S. C. 1355 (d) (1946 ed.)	Payments on resettlement or rural rehabilitation projects constructed with Resettlement Administration funds.

*This list is based on the Preliminary Report on Taxes and Other In-Lieu Payments on Federal Property prepared for the House Committee on Interior and Insular Affairs by the Legislative Reference Service, Library of Congress, and dated February 1, 1954. See Committee Print No. 23, 83d Cong., 2d Sess.

16 U. S. C. 590z–8	Payments on lands being prepared for irrigation and return to private ownership under the Case-Wheeler Act.

Department of the Interior

16 U. S. C. 835c–4	Payments with respect to any real property located on the Columbia Basin project.
16 U. S. C. 406d–3	Payments to the State of Wyoming for lands recently acquired in Grand Teton National Park.
53 Stat. 753–4	Payments for Reconveyed Coos Bay Wagon Road grant lands in Coos and Douglas Counties, Oregon.

General Services Administration

40 U. S. C. 490 (a) (9)	Payments for lands declared surplus by tax-paying government corporations.

Housing and Home Finance Agency

42 U. S. C. 1413 (c)	Payments for low-cost housing constructed by United States Housing Authority.
42 U. S. C. 1456 (c) (3)	Payments for property involved in slum clearance and community development.
42 U. S. C. 1546	Payments with respect to real property and improvements used for defense housing, etc., erected under the Lanham Act during World War II.
42 U. S. C. 1592g	Payments for real property and improvements acquired for housing in critical defense housing areas.
42 U. S. C. 1593 (b)	Payments for housing and community facilities needed in connection with isolated defense installations.
40 U. S. C. 422–3	Payments with respect to slum clearance and low-cost housing projects.

12 U. S. C. 1749a	Payments for housing at educational institutions on which loans made by the agency have been foreclosed.

PROVISIONS FOR STATE OR LOCAL TAXATION OF FEDERAL PROPERTIES

Department of Agriculture

15 U. S. C. 713a-5	Real property of the Commodity Credit Corporation shall be subject to taxation to the same extent according to its value as other real property
12 U. S. C. 931, 933, 1020f (a), 1111, 1138c	Property held for tenant purchase loans and mortgage insurance is subject to direct taxation like any other privately owned property
12 U. S. C. 1020f (a)	Real property of the Federal Farm Mortgage Corporation shall be subject to taxation to the same extent according to its value as other real property is taxed

Department of the Interior

16 U. S. C. 835c-1	Any public lands acquired in connection with the Columbia Basin project shall be subject to taxation in the same manner and to the same extent as privately owned lands

Department of Justice

50 App. U. S. C. 36	Property transferred to the Alien Property Custodian shall not be exempt from state or local tax laws

Federal Credit Unions

12 U. S. C. 1768	Real and tangible personal property of Federal credit unions shall be subject to taxation to the same extent as other similar property

Federal Deposit Insurance Corporation

12 U. S. C. 1825	Real property of Federal Deposit Insurance Corporation shall be subject to taxation to the same extent as other real property

Federal Home Loan Banks

12 U. S. C. 1433	Real property of Federal Home Loan Banks shall be subject to taxation to same extent according to its value as other real property

Federal Reserve Banks

12 U. S. C. 531	Real estate of Federal Reserve Banks shall be subject to state and local taxes

Federal Savings and Loan Insurance Corporation

12 U. S. C. 1725 (e)	Real Property of the Federal Savings and Loan Insurance Corporation shall be subject to taxation to the same extent as other real property

Home Owners Loan Corporation

12 U. S. C. 1463 (c) (1940 ed.).	Real property of the Home Owners Loan Corporation shall be subject to taxation to the same extent according to its value as other real property.

Housing and Home Finance Agency

12 U. S. C. 1714; 42 U. S. C. 1456 (c) (3).	Provides for taxation of real property acquired in connection with insurance under the National Housing Act loans, and loans for housing at educational institutions.

National Agricultural Credit Corporation

12 U. S. C. 548 (d) (3), 1261.	Real property of the National Agricultural Credit Corporation shall be subject to taxation to the same extent as other real property is taxed.

National Banks

12 U. S. C. 548 (d) (3).	Real property of national banks shall be subject to taxation to the same extent according to its value as other real property.

Reconstruction Finance Corporation

15 U. S. C. 607	Real property of the Reconstruction Finance Corporation shall be subject to special assessments for local improvements and shall be subject to state and local taxation to the same extent according to its value as other real property.

Veterans Administration

38 U. S. C. 694j (a) (6).	Property acquired by the Veterans Administration under the law with respect to loans to veterans shall not be exempt from taxation.

PROVISIONS FOR REVENUE-SHARING AFFECTING FEDERAL PROPERTIES

Department of Agriculture

16 U. S. C. 500	Twenty-five percent of all moneys received from each national forest shall be paid to the state in which the national forest is located.
36 Stat. 562, 573, sec. 6, 24.	Such proportion of the gross proceeds of all national forests located within Arizona and New Mexico as the area of lands granted for school purposes bears to the total area of all national forests in each of the two states shall be paid to each.

7 U. S. C. 1012	Twenty-five percent of the net revenues received from use of submarginal land held by the Soil Conservation Service shall be paid to the counties in which such lands are situated.

Department of Defense

33 U. S. C. 701c (3)	Seventy-five percent of moneys received from lease of lands acquired for flood-control purposes shall be paid to the states in which such property is located.

Department of the Interior

31 U. S. C. 711 (17); 43 U. S. C. 391, 1187.	Five percent of the net proceeds from the sale of public lands shall be paid to the states in which such lands are located.
48 U. S. C. 353	The entire income derived from sale of timber and disposition of public lands in Alaska shall be reserved for school and other educational purposes.
43 U. S. C. 315b, 315i	Twelve and one-half percent of the grazing-fee receipts from public lands within grazing districts are paid to the states.
43 U. S. C. 315i, 315m	Fifty percent of the grazing-fee receipts from public lands outside grazing districts are paid to the states.
43 U. S. C. 315j	Thirty-three and one-third percent of the fees from grazing districts on Indian lands ceded to the United States are paid to the states.
39 Stat. 218; 50 Stat. 875-6.	Fifty percent of the receipts of the Oregon and California land-grant funds, plus the unearmarked portion of an additional twenty-five percent are paid to the Oregon counties in which the lands are situated.

53 Stat. 753–4	Up to seventy-five percent of the receipts from reconveyed Coos Bay Wagon Road grant lands may be paid to Coos and Douglas Counties, Oregon.
30 U. S. C. 191, 275, 285 286, 292.	Thirty-seven and one-half percent of the receipts in bonuses, royalties, and rentals under the Mineral Leasing Act are paid to the states and Alaska.
42 Stat. 1448; 44 Stat. 740; 48 Stat. 1227, sec. 4.	Thirty-seven and one-half percent of the oil and gas royalties from oil and gas lands in the south half of Red River, Oklahoma, shall be paid to the state in lieu of state and local taxes on certain tribal funds.
47 Stat. 1418	Thirty-seven and one-half percent of the net royalties from oil and gas lands added to the Navajo Indian Reservation in Utah shall be paid to Utah.
43 U. S. C. 617c, 618–618c.	A certain sum of the revenues from the operation of the Boulder Canyon project is appropriated to Arizona and Nevada.
16 U. S. C. 715s	Twenty-five percent of the net proceeds from the sale of wildlife refuge products and privileges are paid to the counties in which the refuges are located.
16 U. S. C. 669–669i	A sum equal to the revenue from the excise tax on firearms, shells, and cartridges is distributed among the states for wildlife restoration
16 U. S. C. 777–777k	A sum equal to the revenue from the excise tax on fishing rods, etc., is distributed among the states for fish restoration
48 U. S. C. 199 (k)	Fifty percent of the net proceeds from the sale of various game licenses and permits in Alaska are paid to the Territory